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MR. FRANK LOCK, *Delegate of the*

NATIONAL BOARD OF FIRE UNDERWRITERS

AT THE

CONFERENCE ON UNIFORM STATE LEGISLATION HELD UNDER THE AUSPICES OF THE NATIONAL CIVIC FEDERATION IN WASHINGTON, D. C. ON JANUARY 17, 18 AND 19, 1910.

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UNIFORMITY IN FIRE INSURANCE LEGISLATION AND IN THE INTERPRETATION OF FIRE INSURANCE CONTRACTS

Paper prepared on behalf of the National Board of Fire Underwriters by Mr. Frank Lock for the conference on Uniform State Legislation held in Washington, January 17, 18, 19, 1910.

Mr. Chairman and Gentlemen:

This paper intentionally touches but briefly the subject matter suggested in the title; amplification is for subsequent work, the present aim is only to call attention to the breadth of the topic.

The National Board of Fire Underwriters, which body I represent, includes in its membership nearly all companies of importance doing Fire Insurance business in the United States and is the organization most truly representative of the Fire Insurance interests. The companies composing it protect over $45,000,000,000 in value of property, representing probably not less than 18,000,000 policies in force. It may be incidentally stated that the Fire Insurance interests affect *directly* almost every property holder and *indirectly* every citizen in the United States It is doubtful if any other class of corporation transacts a business which is so thoroughly interstate as that of Fire Insurance, since the principal companies with headquarters say in Connecticut, New York or Pennsylvania have their functions in active exercise through their agencies in every city, village or group of buildings in the United States.

The bulk of Fire Insurance business effected in any State of the Union is transacted by companies not native to the individual State; this is true without any exception. For instance, in 1908, companies native to their State transacted:

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In New York 37% of the business; companies foreign to the State 63%.

In Pennsylvania 25% of the business; companies foreign to the State 75%.

In Connecticut 16% of the business; companies foreign to the State 84%.

In Missouri 5% of the business; companies foreign to the State 95%.

In Massachusetts 4% of the business; companies foreign to the State 96%.

In Illinois 4% of the business; companies foreign to the State 96%, and so on down to States which virtually have no native Insurance Companies at all.

Connecticut is the State more than any other famed for its identification with the Fire Insurance business, yet its Home Companies, as indicated above, do but 16% of its total business.

What is emphasized by these preliminary remarks is that the business of Fire Insurance is peculiar above most others for its ramifications over all the States, and the way in which it is interwoven into the fabric of the community. The indemnification of the individual loser by fire loss is perhaps its least important function, however necessary that may be; as furnishing the underlying basis for credit wherever destructible values are concerned, so multiplying the wheels of commerce, and as justifying the confidence which permits communities to boldly accumulate vast material values in the large cities exposed to the risk of sweeping conflagration are the chief functions of Fire Insurance to be found. Hence Fire Insurance is affected prejudicially by the lack of uniformity in State laws and in the interpretations of State courts to an unusual extent, and as a result the business is impeded while the cost is greatly enhanced. Inequality between State and State and man and man, due to the incongruities, inconsistencies and uneven treatment discovered in the several States, is more apparent in connection with the Fire Insurance business than in almost any other interest.

The theory of Fire Insurance is that the consideration for premiums is much in the nature of a tax, for which equal service is rendered to all alike, the assessment being based on a scale intended to measure and charge for the hazard of fire loss to all alike.

Action, therefore, which tends to uniformity is assured of the glad support of the National Board of Fire Underwriters from the outset, as it is the feeling of the companies composing its membership that it would be better in the interest of all concerned to have uniformity on a basis even of poor laws, rather than to have perpetuated the present reign of confusion. All concerned would at least know that they were receiving equal treatment, even if not assured that everything was ordered to the best advantage.

The endeavor on the part of the companies honestly to observe the multifarious requirements of some 48 States and Territories, each differing from the other, is difficult and not without danger because of the penalties involved. In one State requirements may be enforced under penalty which in the adjacent State are expressly forbidden under penalties for observance. For instance, one State may require the absolute observance, under penalty, of tariff rates to be publicly exhibited, while another State forbids, under penalty, any form of agreement on a tariff. One State prohibits rebating, while the other forbids anything which will tend to prevent any man from obtaining his individual insurance as cheaply as possible. In a place like Bristol, intersected by the State line of Virginia and Tennessee, we may insure a man owning a piece of property situated across the dividing State line; but should we, in case of fire loss, treat him alike for both ends of his building we should be under penalty of the law to one State or the other! Many pages could be filled with inconsistent and contradictory requirements forced upon the body public to its great detriment, merely because its individual constituents dwell on different sides of imaginary boundary lines, although with identical interests they are served by the same companies for the same purposes. In result much injustice is wrought, the cost of the service is heavy and uneven, its character is not of equal benefit, these things being due to causes artificial and largely remediable by uniformity in law.

Not only is there a difference in statutory requirements in the different States, but allied to this is the difference in the standard forms of contract called for by States, which would appear to be unnecessary, embarrassing and as adding to the cost of the business. Governor Wilson of Kentucky, in his address delivered this morning in another place, very aptly used the fact that a

Standard Fire policy contract had been adopted, to illustrate the wise effect of uniformity in laws. He could not have used a better illustration; yet there are at least eight standard forms, and they are being multiplied all the time, which seems a strange anachronism. The endeavor on the part of the Underwriters has been to secure a form of contract as enlightened and liberal as possible in the interests of the public, and which should be uniform all over the country, thus according equal treatment to all, seeing that the conditions to be met are practically alike over all. The business of Fire Insurance is simple in its conception and is comprehended within a few broad general principles which apply alike to the Atlantic and Pacific, to the Lake or Gulf States. Yet many of the individual States seem to think it requisite for the protection of their citizens that a standard form of policy should be provided for their individual State differing in terms to a greater or lesser degree from the standard forms of other States. As a matter of fact this works confusion with no resulting benefit. The form of the policy contract should be standard all over, and the force of this is greatly emphasized when it is repeated that the business itself is actually transacted by corporations which are almost wholly interstate in the character of their operations, since all of our principal Fire Insurance Companies derive less from their own home State than from States which are foreign to them.

When we come to the interpretation of the contract itself we are met by the same objectionable features. Take the so-called New York standard policy which is used in more States than any other. In some of the States the form is made a part of the statutory law; in others it is adopted as a requirement of the Insurance Department acting under a statute calling for a standard form. In still other States the use is left optional. Owing to these differences the policy form itself can be added to or taken from by conditions in some States that are prohibited in other States, so that the so-called standard form ceases to be standard, even where it may appear to be so. It further results that, due to these causes, the State courts regard the provisions of the policy contract from differing standpoints and have recorded opinions of the widest and most divergent character. Court interpretations of the so-called standard form leave the companies in bewilderment as to what will effect a legal cancellation of a policy since

the decisions of one State are diametrically opposed to those of other States. Similarly on many most important points there is no established ground; as for instance upon the question of what constitutes "sound value" when claim is made for a loss, as also what are the rights of both the assured and the companies under the "appraisal" clause. A large percentage of the litigation which comes in is not due to the desire of companies to avoid payment or to the desire of the assured to obtain more than fair compensation for loss, but is due to the fact that the interpretation of the contract lacks in uniformity or consistency, so that honest difference of opinion exists, the question being carried into court for a determination which being determined in the individual case perhaps only adds still further to the confusion of precedents. Another important phase of non-uniformity in this respect is the forbidding statutes of some of the States which do not permit the transfer of suits to the Federal Supreme Court where an interpretation might be secured which would be final, as in the celebrated case of "Paul vs. Virginia."

Another instance of non-uniformity which makes itself severely felt is in that of taxation as applied by the different States. In some States a considerable percentage of the revenue of the State for general purposes is derived from taxation upon Fire Insurance premiums and licenses. In other words there is taxation for revenue which is derived not from the profits of the business but from the gross amount of premiums. Other States base their taxation and license charges mainly on the idea of securing sufficient revenue for the proper administration of the Insurance Department. No divergence of this kind can be limited in its effects to the individual State, as it is impossible to administer the business as though each Insurance Company were local to each State in which it does business. Intelligently regarded, it is seen that both as to losses and expenses the mutual character of the business more or less affects the operations of the country as a whole, so that, for instance, results in Illinois have an effect upon premium rate in New York, although it may be remote and not possible of definition. The fact remains that unequal rates of taxation work injustice as between State and State.

Another feature of profound importance is the effect of uniformity could the States and cities be brought to adopt the best regulations possible for the creation and administration of the

office of State Fire Marshal, which office should take cognizance of the circumstances connected with every outbreak of fire, and with every feature liable to produce fire, whether by poor construction, poor condition of premises, carelessness or criminality. Uniformity should also obtain in the nature of penalties for such offenses. Yet another feature which should be taken up as a matter of uniform State legislation is that of the enactment and enforcement of proper Building codes. The destruction of property by fire in this country amounts to over $200,000,000 per annum directly, and at least three times that amount indirectly. Uniformity of legislation along the lines indicated in this paper could not fail to produce a great effect in lessening this enormous waste, a loss which is not a question of a distribution of values, but of an utter destruction of values. The National Conservation movement has no more important matter to consider than this reckless destruction, not of undeveloped resources but of created values.

This whole discussion has, so far as possible, avoided any treatment of undesirable statutes, *per se,* but has been confined to the benefits to be derived from the harmonizing of things which are alike in their essentials for the good of those who are served by them. Such standardization would surely result in the stability of the business of Fire Insurance, and in a reduction of its cost —objects which render it eminently desirable that the utmost should be done to bring them about.

The elements of Fire Insurance comprise four principal points: *First,* the rate of premium consideration; *second,* the form of the contract; *third,* the method of adjustment and payment of fire loss, should such occur; *fourth,* the provision of a basis of credit for the business of the country. This last item depends upon the stability of the companies, and involves in it the efficiency of the State Insurance Departments which supervise. This supervision should pre-eminently be according to a uniform standard. A consideration of the four elements named would show that they are universal in their character and apply alike to all sections of the country; therefore, to be just, economical and efficient, they should all be upon a uniform basis so far as regards legislation. There can be no question but that everything which tends to remove divergence in standards and to simplify methods must result to the great benefit of the community at large. So

far as Fire Insurance companies are concerned, they receive their compensation in the margin which is left out of the premium after disbursements for losses and expenses. To them, in a sense, it is not essential whether the rate of premium be high or low, although left to themselves, their efforts are to produce a lower average rate of premium for a safer average condition of property. The real question is one for the public at large, and the solution of it is in their own hands, whether they shall have high or low rates. If the latter be their choice, then uniformity in requirements by the States will be a sure factor towards securing eventually a substantial reduction in the destruction of property and in the cost of transacting the Fire Insurance business, which in turn must be followed by a substantial reduction in the average premium charge.

To give practical effect to the foregoing points, it is suggested that the whole question should be dealt with by a commission composed of State officials and Fire Insurance men to formulate standard laws, the simplest form of policy contract, efficient State Fire Marshal laws and uniform building codes which shall be models for cities of all sizes. Such a commission should draw to it all needed counsellors and be required to frame bills to meet the conditions to be recommended for adoption by the different State legislatures.

The question may be raised, why not invoke the Federal Government, seeing that the operations of Fire Insurance business are eminently interstate in character? One answer to that question is that the removal of the supervision of Fire Insurance to the Federal Government could only be brought about by a constitutional amendment and the prospect of such an amendment upon such a question is certainly so hopeless as to be outside of the range of practical consideration at the present time.

As I have said, the National Board welcomes the opportunity to co-operate in the movement for uniform legislation. Upon the surface such co-operation may not appear to mean much, but when it is reflected that the Fire Insurance companies have in their official family as agents, representatives in every city and village of the country and that such agents have virtually all of the property owners in the country as their friends and clients, it becomes evident that the proper interests of those agents can be made to count for much in needed reform tending to simplification, economy and efficiency in business conditions through uniformity in legislation.

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